COAL TRAINS THROUGH THE SKAGIT VALLEY TO THE GATEWAY PACIFIC TERMINAL: WHO WOULD PAY THE COSTS? [1]

I. THE KEY QUESTION AND SUMMARY OF CONCLUSIONS

Should the scoping and Environmental Impact Statement (EIS) process for the Gateway Terminal project include the transportation impacts on Skagit County of coal trains to and from the terminal?

Yes. Rail/traffic infrastructure projects that will be difficult, expensive, and time-consuming would be needed to mitigate the impacts on Skagit County's transportation system imposed by the Gateway Terminal project. Project applicant SSA Marine will likely argue that infrastructure improvements needed in Skagit County to eliminate transportation impacts should not be studied as part of the EIS process. Yet the traffic problems resulting from additional coal trains traveling through Skagit County to Cherry Point are likely to have substantial economic impacts on the County. The issue needs to be raised in scoping and thoroughly analyzed in the EIS process.

Even if the EIS scoping and process results in applicant SSA Marine and BNSF railroad having to foot a portion of the sizeable mitigation costs, projects needed in Skagit County will face stiff competition with communities all along the rail route for any mitigation amounts applicant may pay and for scant taxpayer funding, resulting in unmitigated impacts that will persist for many years.

The Mount Vernon City Council and the Mayor of Burlington have sent letters to state and Whatcom County officials expressing their concerns about the impacts of the Gateway Terminal project on existing "at grade" rail crossings that bisect those cities. The Gateway Terminal project is reasonably anticipated to result in 28 more miles of coal trains daily (consisting of 18 trains each over 1.5 miles long) through Skagit County. This will more than double the number of trains that currently travel through the county.
Traffic studies for the two cities by Gibson Traffic Consultants, Inc. found that traffic delays at Mount Vernon's and Burlington's crossings will result from the additional coal trains and that emergency services response times may be degraded. This will significantly impact the businesses and residents of these cities. The Skagit County Commissioners have also sent a letter expressing their concern about the stability of the BNSF Burlington bridge across the Skagit River under heavy traffic and load conditions.

This informal report sets out questions about significant new rail infrastructure that would be needed in Skagit County to accommodate the additional coal trains and includes

[1] Prepared in October and November, 2011 by a private citizen and Mount Vernon resident Mary Ruth Holder, 109 N. 6th St. (360) 419-3124, mruthholder@gmail.com. Text following questions is intended to provide information that may at least partially respond to the questions. This information is based upon research of federal laws and regulations, review of a federal manual on railroad-highway grade crossings, review of the state and local transportation information including the rail plans, conversations with elected officials and WSDOT staff, conversations with local area transportation planners, review of traffic studies for Burlington and Mount Vernon, information provided at www.coaltrainfacts.org, and a review of correspondence from interested parties to state and federal decision makers for the project.

questions about what projects might be needed, potential costs of the projects, who will pay, and the possible results. The answers offered herein are not intended to be comprehensive, but are meant to be a starting point for additional discussion and further research.

This report concludes the following:

- Significant rail/traffic infrastructure changes needed in Skagit County to accommodate the dramatic increase in rail traffic associated with the Gateway Terminal and would include new grade separation projects (overpasses and/or underpasses) for current at grade crossings; replacement of the Burlington BNSF bridge; and additional new or extended railroad sidings and/or double tracks;

- Each project will require significant pre-construction and construction activities, and the total projects needed will cost in the hundreds of millions of dollars;

- Funding for needed projects would largely come from federal, state, and local taxpayer monies distributed from federal transportation programs for railroad-highway safety and high speed rail and from other, smaller and more limited federal, state, and local taxpayer funded programs;

- The availability of public funds depends on action by federal, state, and local officials and there be may stiff competition among cities along the rail corridor for shrinking and uncertain public funds;

- Federal law and regulations limit funding by BNSF railroad to 5% of construction costs for grade separation projects, and in some cases the railroad is not required to pay any costs;

- Depending on the scope and results of the EIS process, Gateway Terminal project applicant SSA Marine may be required to pay some amount for rail/traffic infrastructure mitigation; but these funds, if any, would likely be inadequate to cover infrastructure needs throughout the rail corridor;

- Infrastructure projects of the type needed in the Skagit Valley can take a decade to fund, plan, and construct - long after the Gateway Terminal may be built and fully operational;

- Some projects, for example in Mount Vernon, will be complex to design and engineer, and more expensive to build, because of proximity to the Skagit River, Interstate 5, hillside terrain, residences, and businesses;

- The Gateway Terminal project and resulting impacts upon existing transportation infrastructure and local economies were not anticipated by state or local transportation planners.

Local governments and individuals along the rail line are not obligated to answer any questions about potential impacts associated with the Gateway Terminal project applicant. Instead, if these questions are raised in the scoping process and included in the EIS process, it will be up to the Gateway Terminal project developers to study the transportation and associated economic impacts and provide answers about how SSA Marine will mitigate these impacts. Nevertheless, local transportation planners need to watch the Gateway Terminal proposal and permitting process closely; monitor Congressional action (or inaction) on transportation bills and Washington State's decisions on managing its budget shortfall; and be prepared to plan for the significant transportation challenges ahead.

II. WHAT'S NEEDED?

A. What improvements would be needed to rail infrastructure in our vicinity to accommodate the trains hauling coal to the Gateway terminal and still maintain our transportation system?

1. New grade separations or other rail safety projects in cities in Skagit County.
2. Addition of new or extended sidings or bypass track from Everett to Bellingham (currently a single track).
3. Burlington Bridge replacement.
4. Construction of new railway track projects along the "Coastal Route" (Bow to Cherry Point) and/or along the "Farm Land Route" (Burlington, Sedro Woolley, South Fork Valley and Nooksack Plains including Sumas and Lynden, thence to Custer)? Which of these routes will the coal trains use?

Although rail traffic through Skagit County is expected to increase as the national and state economy rebounds, the unusually large number, length, and weight of trains associated with the Gateway Terminal will implicate significantly more rail traffic in a shorter amount of time than was reasonably expected. Several kinds of transportation infrastructure projects will need to be constructed to accommodate the coal trains.

New grade separation projects would likely be needed in Mount Vernon and Burlington and for the access roads of Pease and Cook Roads to deal with east-west traffic congestion caused by increased rail traffic. A grade separation means a project for which an "at-grade" road that crosses a rail line is separated from the rail line by building an overpass or underpass. One example of a grade separated crossing is found along 4th Street in downtown Mount Vernon. This grade separation passes over both the rail line and I-5.

New railroad siding projects in order to accommodate both passenger and freight trains, and other improvements such as upgrades to existing track, siding track extensions, bypass tracks, double tracks, and other safety-related improvements will be needed along the route from Everett to Bellingham in order meet the State's goal of expanding and improving Amtrak Cascades service between Portland, Oregon and Vancouver, B.C. The Hickox Rd. project in Mount Vernon is an example of a siding project. Siding and other

projects must be designed to accommodate the longer 1.5 to 1.6 mile freight trains carrying coal to the Gateway Terminal.

Skagit County Commissioners have expressed their concern to the Governor that the BNSF Burlington Bridge over the Skagit River may not be able to withstand the weight of the additional coal trains unless the current structure is replaced. The over-bank piers on the 1916 bridge, owned by BNSF, have significant structural issues that threaten the integrity of the bridge, particularly during flood events. Also, debris collecting under the bridge during high water events causes scouring of the levees which could lead to flooding of adjacent areas.

There are two possible routes for the trains after they leave Mount Vernon, the "Coastal Route" (Bow to Cherry Point) and/or the" Farm Land Route" through Sedro Woolley. The Farm land route would reduce pressure on the system which is building in Skagit County due to the Tethys and Tesoro projects in Anacortes. It is unknown at present which of these routes BNSF will use for the coal trains. The Gateway Terminal applicant and BNSF should identify which route will be used. Changes, improvements, and/or new construction may be needed depending on which route will be used.

B. ***What else may be needed?***

Infrastructure projects to accommodate the increased rail traffic would not just result in major construction activities: there are significant pre-construction activities that will be needed for any changes. Pre-construction activities would include planning, feasibility studies, revenue forecasting, and preliminary engineering and design work. Depending on the location and nature of the needed rail infrastructure improvements, various types of federal, state and/or local permits may be needed for each improvement that would necessitate the study of environmental impacts, the preparation of environmental impact statements, and provisions for environmental mitigation. Projects can also involve acquisition of easements, right-of-ways, temporary crossings for construction purposes, materials and equipment. Projects will need to be scheduled to ensure the availability of contractors (who must furnish the proof of required insurance coverage) and workforces. Plans must be formulated for rail and highway traffic control and safety during construction. All of these pre-construction activities will require state and local government staff time and the expenditure of significant amounts of money.

III. WHAT WILL BE THE COMBINED TRANSPORTATION IMPACTS OF TRAINS ASSOCIATED WITH THE GATEWAY TERMINAL AND THE PROPOSED TESORO AND TETHYS PROJECTS?

Unknown. Questions about the trains associated with these projects combined with the Gateway Terminal project's coal trains and other "cumulative impacts" should be raised in the EIS process for the Gateway Terminal. If the Gateway Terminal applicant SSA Marine responds that it need not consider the Tesoro and Tethys projects in the EIS, that response should be challenged. Note: there are approximately 15 trains of various kinds passing through Mount Vernon and Burlington daily at present. The Tesoro project is

presently anticipated to result in one loaded 100-car train every other day. It is unknown by this author how many trains might be added by the Tethys bottling plant project, but news accounts have referred to "350 rail cars" daily.

IV. WILL THE GATEWAY TERMINAL TRAINS BE LIMITED TO 18 (9 LOADED AND 9 RETURNING) A DAY?

Not necessarily. Nothing in public materials about the project available thus far seems to indicate the applicant will limit the number of trains to 18 per day at full build out of the terminal. The number of trains could be increased over time should Asia's demand for coal from the Powder River Basin in Montana/Wyoming increase. SSA Marine has disclosed only its plans to develop 350 acres for the Gateway Terminal out of the 1100 acres it owns at the Cherry Point location. Common sense suggests there is considerable room for expansion. Also, once the Gateway Terminal is constructed, the timeframe for reaching the 18 coal trains per day through Skagit County could be shortened as Asian demand increases. It will be important for this issue to be clarified during the EIS process: the applicant has been vague on this point in presentations before local elected officials.

V. WHAT WILL NEEDED INFRASTRUCTURE PROJECTS COST?

A. *What do grade separation projects cost?*

The costs of each project will depend on construction factors like soils, connection to existing roadways, private right-of-way acquisition costs, shoreline issues near the Skagit River, wetlands, elevation issues etc. Individual grade separation projects in general can easily cost $15-25 million per project and could run higher. As one example of such costs, 9 railroad-highway crossing projects associated with the Roberts Bank port rail corridor in B.C. cost a total of $307 million. In another example, two ongoing grade separation projects in Yakima, Washington are expected to cost a total of over $44.274 million. The Yakima project is for constructing two underpasses beneath a BNSF mainline that are critical to the movement of truck freight traffic, emergency vehicles, and the movement of vehicles into and out of the downtown area. Of particular complexity (and thus expense) for local projects may be alleviating at-grade crossings near the Skagit River and I-5, including across Kincaid St. in downtown Mount Vernon.

B. *What would reconstructing the Burlington BNSF railroad bridge cost?*

The Skagit Metropolitan and Skagit-Island Counties Regional Transportation Plan for 2010-2035 states on p. 66 that these costs would be " > $30 million." The project is identified in the Plan as a "short range" project needed between 2008-2015. Some transportation planners, however, have suggested that the total costs would be significantly more and their estimates range from $90 million to several hundred million dollars. Additional costs to replace the bridge would include special design and construction costs associated with minimizing disruption to train operation because there is no alternate route for trains across the Skagit River here. The project is still not funded

as of this writing.

C. *What is the cost of new railroad sidings?*

The first phase of the Hickox Rd. siding project cost $7.1 million. The 2003 Legislative transportation package (new and used vehicle sales tax) accounted for $3.8 million and an August 2010 High Speed Intercity Passenger Rail grant for $3.3 million was used. The second phase, to extend the siding, will be funded with Federal Railroad Administration and some additional state 2003 dollars. WSDOT is awaiting release of the federal funding. The second phase of the project is expected to run approximately another $7 million. BNSF is not funding any part of this project but is the construction manager for it.

VI. WHO PAYS?

What are the potential sources of funding for rail infrastructure improvements?
Public (taxpayer) funding: Federal, state and local governments?
Private funding: BNSF Railroad, Other private (SSA Marine, Peabody Coal)?

A. PUBLIC (TAXPAYER) FUNDING

Federal, state, and local taxpayer monies provide the most significant funding sources for infrastructure projects needed to alleviate at grade railroad crossings, maintain passenger rail service, construct sidings, and replace trestle bridges. Federal transportation funds typically comprise the most significant amounts provided for these projects. No public funding source, however, provides the complete funding for any one project. Instead, various types of funds from various public funding sources are cobbled together to fund any one transportation project.

In the case of infrastructure needs resulting from the Gateway Terminal project, local governments in Washington State and perhaps elsewhere all along the rail line over which coal will be transported from Wyoming to Cherry Point can expect to have to compete for the federal and state funds as they do for other transportation dollars. The difference here is that the number of projects for which funding is being sought may be much larger than during a usual planning period and at a time when funding is stretched thin and is more uncertain. Current Congressional efforts to reduce the federal budget for purposes of addressing the debt may impact all programs, including transportation funding for highway-rail safety and/or high speed rail. Also, at present Washington State's Governor and Legislature are grappling with a $1.4 billion budget shortfall when funding for needed transportation projects was already challenging. Local government budgets are also stretched thin. The public funding sources discussed below demonstrate historical rail infrastructure project funding; there is no promise these can or will continue in the current budget setting to be applied to the transportation needs created by the Gateway Terminal.

1. FEDERAL FUNDING

a. SAFETEA-LU

A comprehensive federal transportation law, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), may provide a source of federal monies for some projects. SAFETEA-LU is currently up for reauthorization by Congress. The Act actually expired on September 30, 2009; current levels of funding have been kept afloat by multiple short-term extensions, with Congress recently extending funding through March 31, 2012. The longer-term SAFETEA-LU authorization bill is expected to contain significant reforms (and will likely be renamed as it has been during previous re-authorizations). Different authorization periods and funding levels have been proposed by House and Senate committees.

The Deputy Director of the American Association of State Highway and Transportation Officials' (AASHTO's) Center for Excellence in Project Finance, Joung Lee, reviewed current transportation policies, funding sources and shortfalls, and versions of the SAFETEA-LU reauthorization bills in an October 2011 presentation to the National Federation of Municipal Analysts entitled Transportation at the Crossroads: Life after SAFETEA-LU, that the "financial backbone of the Federal highway and transit programs is in critical condition" and listed the challenges ahead: "budget cuts are the order of the day; 'stop-and-go' capital program; the road ahead is at best unclear."

Deputy Director Lee concluded that it is important to reauthorize SAFETEA-LU soon because state Departments of Transportation and contractors depend on long term investment time horizons. The reauthorization of SAFETEA-LU should be watched closely to see if new monies applicable to the Skagit Valley's rail infrastructure needs resulting from the Gateway Terminal project would be available for the state and local governments.

i. Funding from SAFETEA-LU's Highway-Rail Crossing Program

SAFETEA-LU may provide funding for local grade separation projects. Funding under SAFETEA-LU's railroad crossing safety program involves a lengthy and detailed planning and funding process. SAFETEA-LU created a core federal-aid safety program, the Highway Safety Improvement Program (HSIP), found in 23 U.S.C §148. The program established by these laws provides for funding for various safety improvement projects to ensure significant progress in reducing highway fatalities and serious injuries.

The Federal Railroad Administration (FRA) administers the Highway-Rail Crossing Program. Funding from this program can be obtained for projects that eliminate at grade railroad crossings and create new grade separations. 23 U.S.C §130. HSIP defines eligible projects including construction of any project to eliminate railway-highway crossing hazards eligible for funding under 23 U.S.C. §130, "including the separation or protection of grades at railway-highway crossings." Under HSIP, the section 130 funds can be used for railroad grade crossing safety improvements including crossing

elimination by new grade separations, relocation of highways, relocation of roadways, relocation of railroads, crossing closure without other construction, and crossing improvements (e.g., traffic control devices, crossing surface improvements).

A state can receive federal SAFETEA-LU funds for railroad crossing safety as long as it has developed and implements, on a continuing basis, a Strategic Highway Safety Plan and maintains comprehensive accident, traffic, and highway data, including for railroad-highway grade crossings. Washington State receives funding under this law. Under SAFETEA-LU, federal funding for projects can be 90% or 100% depending on the type of work being accomplished Grade-crossing safety improvements are eligible for 90% federal share, and railroad crossing closures and the elimination of hazards are eligible for 100% funding. When federal funding is 90%, states, local governments, and/or railroads share the funding of a 10% match. Funding cannot amount to more than 10% of all sums apportioned for all Federal-aid systems for any fiscal year. 23 U.S.C. §120(c). Also, SAFETEA-LU continued a requirement that a state spend 50% of the federal dollars apportioned to it for the installation of protective devices at railway-highway crossings.

Realistically, the first step in obtaining these federal monies would be ensuring the support (and advocacy) of our Congressional delegation. To obtain federal funds (if available) the state must, among other things, identify needed projects, prioritize and score them (using a weighted model that includes factors like accident history, traffic volume, train volume), provide cost estimates, identify resources available, and assess potential dangers of grade crossings used by the public on an ongoing basis. Projects must be described in the State's strategic safety plan. Funds authorized to be appropriated under 23 U.S.C §130 may also be used to provide a local government with matching funds to be used when state funding programs are available which require local government matching funds. 23 U.S.C. §130(h). Funds available to a state can also be provided to local governments in the form of incentive payments for no more than $7,500 upon the permanent closure of an at-grade railway-highway crossing within the local government's jurisdiction, but only if the railroad also makes an incentive payment to the local government. 23 U.S.C. §130(i).

While the federal funding is limited ($220 million has been set aside each year, including in 2011, for the country's Highway-Rail Crossing Program and is apportioned among the states), there are some monies previously authorized by Congress that are left over in the funds for Washington State. Currently our state is getting together a list of priority projects for these left-over SAFETEA-LU funds. Grade separation projects for local cities necessitated by changes in rail traffic associated with the Gateway Terminal are NOT part of the current list of projects and cannot even be applied for by the state until after the Environmental Impact studies for the Gateway project are complete (so the left-over SAFETEA-LU dollars will not be applied to local projects). Thus, for safety projects needed in this area resulting from the Gateway Terminal, Congress will have to reauthorize SAFETEA-LU and provide funding for these types of projects. Washington State will have to compete with other states for federal dollars and cities in Skagit County will have to compete with other cities along the coal train route for federal funding

apportioned to each state (for example, Marysville has double the number of at-grade crossings that will be impacted by the Gateway Terminal project).

ii. Funding from other SAFETEA-LU programs

Funding from programs within SAFETEA-LU other than the Highway-Rail Crossing Program may also be available for not only grade separation projects but also the BNSF Burlington Bridge replacement and this law needs further study by transportation planners to identify other potentially available dollars. For example, funding may be found in the High Priority Projects Program administered by the Federal Highway Administration (FHWA), SAFETEA-LU §§ 1101(a)(16), 1701, 1702, 1913, 1935, 1936 and 1102. This program provides designated funding for specified projects identified in SAFETEA-LU, however. Funding from this program would be dependent upon not only reauthorization of SAFETEA-LU but also inclusion of specified projects in the reauthorized law. Other programs administered by the FHWA have provided a source of funds are the Projects of National and Regional Significance, SAFETEA-LU §§1101(a)(15), 1102, 1301, 1935, 1936, 1953, 1959 and 1964, and the National Corridor Infrastructure Improvement Program, SAFETEA-LU §§ 1101(a)10), 1302, 1935, 1936, 1102. Funding in 2009 for these two programs, however, is only available until expended and not transferable. In the past this funding has consisted of specific authorized amounts and unspecified funding authorized from the General Fund. Funds from all three of these SAFETEA-LU programs were used for a project in Yakima to eliminate two at grade highway-rail crossings but whether these funding programs will continue in some fashion when SAFETEA-LU is reauthorized is unpredictable.

The Railroad Rehabilitation and Improvement Financing Program (RRIF) amended by SAFETEA-LU authorizes the FRA Administrator to provide direct loans and loan guarantees to acquire, improve, or rehabilitate rail facilities including track, components of track, and railroad bridges and to develop or establish new intermodal or railroad facilities. 45 U.S.C. § 821-2 and 49 CFR Part 260. Eligible borrowers include railroads and state and local governments. RRIF direct loans can fund up to 100% of a railroad project with repayment periods of up to 25 years.

SAFETEA-LU funds have been available for rail-highway crossing hazard elimination projects, including grade separation and crossing closure projects, in high speed rail corridors with the federal share generally being 80% and, for certain safety improvements, 100%. Evaluation criteria, however, give preference to corridors where speeds exceed those planned for Washington State's I-5 corridor, but as this is a continuation of the corridor in areas where travel speeds are higher, might Washington nevertheless qualify for the funds?

b. HSIPR

Other federal funding for high-speed rail may be available. The FRA also administers the High-Speed and Intercity Passenger Rail program (HSIPR) for the purpose of placing an emphasis on building high-speed and intercity passenger rail to connect communities and

economic centers across the country. Although development of high-speed rail and other intercity passenger service has been part of FRA's mission since its creation in 1967, FRA designation of corridors and funding for corridor improvements was initiated in 1991. In 1992, the Pacific Northwest high-speed rail corridor was designated for purposes of linking Eugene and Portland Oregon with Seattle and Vancouver B.C. In 2009, new emphasis was placed on building high-speed and intercity and passenger rail service in America.

The passenger rail system under the current FRA program is expected to complement highway, aviation, and public transit systems. The federal agency is working with states to plan and develop high-speed and intercity passenger rail corridors to serve as a catalyst to promote economic expansion (including new manufacturing jobs), create new choices for travelers in addition to flying or driving, reduce national dependence on oil and foster livable urban and rural communities.

Washington State received $766 million in federal high speed rail funds for the purpose of expanding its high speed service along the I-5 corridor under the 2009American Recovery and Reinvestment Act (ARRA)/High-Speed Intercity Passenger Rail program (HSIPR). The State is in the process of developing and implementing high-speed passenger rail projects along the I-5 corridor. The goal is to deliver rail infrastructure improvements that will expand passenger travel choices, preserve the ability to move freight efficiently, and foster economic growth across the state. The program will allow passenger rail in Washington to move along the I-5 corridor on shared track with freight trains at top speeds of 79 m.p.h.

The HSIPR funds can be used for safety-related improvements, new bypass tracks to add capacity, upgrades to existing track, and upgrades to warning signal systems. As part of this program, the state is also planning to purchase new American-made trains (passenger coaches and cleaner "next generation" locomotives). The State is also upgrading passenger stations using these federal funds. HSIPR funds were used for the Mount Vernon Hickox Rd. siding extension project built for the purpose or relieving congestion and will also be used for phase 2 of this project which will extend the siding.

Other examples of projects using these high speed rail monies include a Port Defiance area (Tacoma) bypass project to reroute passenger trains to an existing rail line along the west side of I-5 (100% ARRA funding of $91 million); a siding extension and bridge over tracks at a road near the Port of Kalama (100% ARRA funding of $37.4 million); track upgrade and new segment of track near Longview Junction (100% ARRA funding of $126 million). Other high speed rail related projects currently in the works will use combinations of other (older) state and federal monies. Although HSIPR funding was sought for replacement of the Burlington BNSF bridge, this funding request was turned down. Funding is still being sought for this project.

The high speed rail projects planned with the state's existing ARRA/HSIPR funds did not specifically take into account the increased freight rail traffic associated with the Gateway Terminal project. It is unknown whether the Gateway coal trains combined with

other proposed coal terminal projects and an overall increase in freight rail traffic for other commodities anticipated when the economy picks up again might overwhelm the state's high speed rail plans (and its investment in those plans) and what the state will do to meet all needs if additional federal funding from the HSIPR source is not forthcoming.

c. Transportation bill in committee

In May, 2011, Senator Patty Murray introduced S 942, the Transportation Infrastructure Grants and Economic Reinvestment Act that could, if passed, help meet transportation needs associated with the Gateway Terminal project and possibly the other planned Northwest coal port projects (at Longview and Gray's Harbor). The bill would provide for competitive grants ($10-$500 million) secured loans, and loan guarantees to a state, local government or transit agency for eligible projects that would have a significant beneficial impact on a state, metropolitan area, region or the United States.

The federal share of the secured loans under S. 942 can be up to 80% of eligible projects and "eligible projects" include a highway, bridge, or public transportation project eligible for funding under existing law, a passenger or freight rail transportation project, and a port infrastructure project. For eligible projects in rural areas, the minimum amount of a grant or secured loan must be $1 million and the Secretary can increase the Federal share of the cost of carrying out the eligible project up to 100%. The maturity date of secured loans would be "no later than 35 years after completion of the project." The bill requires the Secretary of Transportation to give grant priority to eligible projects that require a contribution of federal funds to complete an overall financing package for such projects. The bill outlines project criteria that must be met. The Gateway Terminal project appears to fit those criteria. The bill has been referred to the Senate Committee on Commerce, Science, and Transportation.

2. STATE FUNDING

a. Overall description of state transportation and rail funding_

The state helps to fund railway related infrastructure projects by serving as a conduit for federal funds and by providing state funds. For railway-highway crossing projects the state can either finance the entire project, particularly if a crossing is on a state highway, or can contribute a matching share to obtain federal funding. In Washington State, funding for all transportation infrastructure improvements, including rail projects, is required to be consistent with the Washington State Constitution and statutes. Article VIII of the Constitution, "State, County and Municipal Indebtedness," limits the extent to which these governmental bodies can give or loan credit to corporations. RCW §§47.76 and 47.46 prevent the state from participating in projects with private ownership unless there are clear and demonstrated public benefits. RCW §47.76 specifically concerns freight rail in the state, whereas §47.46 was created for private investment in road and bridge projects but articulates legislative policies that might be applied to public-private partnerships for private rail projects. RCW §47.79 directs the development of the state's high quality, high-speed, intercity rail system that is an important consideration in

planning and constructing rail infrastructure around the Gateway Terminal project.

The State's participation in improving the rail transportation system, including making public safety and passenger service improvements, is within the jurisdiction of four agencies. The Washington State Department of Transportation (WSDOT) plans, funds, implements, constructs and maintains the multimodal transportation system in the state and thus serves as the conduit for state and federal transportation monies. WSDOT is watching the Gateway Terminal project carefully as the increase in rail traffic that is anticipated potentially implicates many new transportation projects across the entire state that will be needed.

The Washington Utilities and Transportation Commission (UTC) is responsible for railroad safety and, among other things. works with the Federal Railroad Administration to inspect hazardous rail shipments. The Freight Mobility Strategic Investment Board (FMSIB) administers projects and strategies for promoting strategic investments in the state's freight mobility transportation system and looks for solutions that lessen the impacts of freight movement on local communities. FMSIB can provide funding for grade separation and crossing improvement projects. The Washington Community Economic Revitalization Board (CERB) issues grants and loans for purposes of creating and retaining jobs and supporting business growth but its rail funding has been for publicly owned rail infrastructure at the Port of Longview. The role of WSDOT, FMSIB, and UTC in funding projects is discussed in further detail below.

The state has and will continue to seek federal, local and private funding for rail infrastructure projects. Indeed, the Legislature specifically requires the state to do this in the law creating the high speed intercity passenger rail program. RCW §47.79.30. In the current economic situation, the state may have to rely on non-state funds more heavily.

Any potential state funding for rail infrastructure improvements needed to accommodate the increased rail traffic associated with the Gateway Terminal project must also be viewed in light of the recently announced state budget shortfalls and anticipated further budget cuts. Even prior to this, the Washington State Transportation Commission's Transportation Plan 2030 (WTP 2030), a policy plan that sets forth goals, principles, policies for the state's overall transportation system - including highway, rail, ferry, transit, and freight projects - describes the state as facing a backlog of critical transportation projects and observes that needs even for repair and maintenance "far outstrip available local, state, and federal funding, all of which have decreased." That plan does not specifically quantify how much of the needs but grossly estimates that at least $175 billion to $200 billion will be needed to meet statewide needs over the next 20 years.

A 31-member task force, "Connecting Washington," was appointed by Governor Gregoire in July, 2011 to study a 10-year investment and funding plan for the state's transportation system as a whole. The final meeting of this task force will be in mid-December and the task force is expected to prepare a report of its recommendations for the Legislature and the public. The Legislature can be expected to send any resulting transportation funding

proposals to the voters for decision. Taxation, fees, and tolling recommendations that may be recommended as a result of the task force's work may or may not receive future Legislative and/or voter approval. Taxation opponents are carefully watching the work of this task force.

The State's 2010-2030 Freight Rail Plan issued December, 2009 includes an assessment of the state's needs based on data from the state's freight railroads, ports, public agencies and other key stakeholders. The needs assessment identifies 109 short- and long-term capital improvement projects and other initiatives. The total cost for the needed projects, where cost estimates are available, is $2.0 billion. The Plan observes that the greatest obstacle to implementation is a lack of dedicated reoccurring funding sources at both the state and federal levels. "With 90% of the $2.0 billion in rail needs identified in this plan unfunded, the state will have to pursue federal funding, as well as boost state spending, and establish public-private partnerships to close the gap between available resources and freight rail needs."

b. Funds administered by WSDOT_

Federal SAFETEA-LU funds are held by WSDOT and can be applied to railway crossing projects that are placed on an agency list of priority projects. As noted above in the discussion about federal funding, while the state still holds SAFETEA-LU funds from prior congressional appropriation of funds and apportionment by the federal Secretary of Transportation, new grade separation projects for local cities necessitated by changes in rail traffic associated with the Gateway Terminal are not part of WSDOT's current list of projects for the use of these funds.

Some projects needed for Skagit County because of the Gateway Terminal might be funded using the high speed intercity passenger rail service dollars held by WSDOT. For some current high speed rail infrastructure projects in the state, older monies from the 2003 Legislative Transportation Package (new and used vehicle sales tax) and the 2005 Transportation Partnership Act Funding Package Projects (motor vehicle fuel tax) are still being used. An example of this is the Hickox Road project in Mount Vernon where combined federal and state funds have been used. The state funds that may be left over from the older transportation packages will not be available for projects associated with the Gateway Terminal project, however. While those funding packages invested in rail projects across the state, the revenues are bonded and committed already to the 421 projects. The state's 2011-2013 transportation budget provided $7 billion in new expenditure authority to WSDOT. Much of the funding comes from the 2003 Nickel and 2005 Transportation Account. This budget makes maintenance of the existing transportation systems a priority but also allows WSDOT to continue to implement capital projects related to the federal high speed rail grants that have been awarded. Anticipated capital projects will include projects to improve track quality and reliability to increase on-time performance of Amtrak Cascades

WSDOT also administers two Rail Assistance programs: the Freight Rail Assistance Program ($6 million for grants 2007-2011), and Freight Rail Investment Bank Program

(Rail Bank) loans. The Rail Bank has made $7.5 million in funding available from 2007-2011, with a maximum loan of $250,000. According to the Freight Rail Plan, however, all of these investments, however, have been in regional and small railroads, believed to be a vital component of the state's transportation system and economic well-being. The Legislature will allocate $2.75 million for freight rail assistance projects during the 2011-2013 biennium, however the Legislature can also increase or decrease the actual funding.

c. FMSIB funding

The FMSIB can also help provide funding for rail separation and other projects approved by the Board for purposes of enhancing freight rail mobility in the state and mitigating the movement of freight through local communities. The Board's funding is passed through WSDOT. Projects are evaluated applying weighted criteria that include freight and general transportation mobility, safety, value to rail operations and access to key employment areas, environment, matching funds (35% minimum match required from public and private sector), consistency with regional and state transportation plans, cost effectiveness, and special or unique circumstances. FMSIB's participation is limited to the construction phase of projects only, but project costs and percentage participation is determined based upon the total project cost. As an example of this funding source, FMSIB is assisting the City of Yakima in constructing its two grade separation projects. $7 million of the total project costs of $44.274 million has been funded from the FMSIB program. The agency's most recent call for projects that would be ready to go to construction during the 2013 to 2019 time frame ended August 2011.

d. UTC funding

Although the state UTC has a grant program for rail crossing safety, the program only involves small grant amounts ($20,000) usually used for projects like warning lights. Although the agency is limited in its funding for at-grade rail crossing improvements, it has jurisdiction over actions by railroads, WSDOT, cities, counties to close a railroad-highway crossing, realign railroad tracks, change a crossing surface that alters the dimensions of the surface, or changes the angle at which the tracks cross a highway or the vertical alignment of a crossing. In those cases and others types that involve rail crossing safety signals, the entity seeking to take the action must file a petition with the UTC for the agency's approval of the project under RCW §§81.53.020 and 81.53.060. According to UTC staff, Washington cities are required to obtain agency approval based upon the classification of city pursuant to state law. So, for example, Mount Vernon would have to file a petition and get agency approval for a crossing safety project, but Bellingham would not.

e. Other state transportation programs

As with federal transportation program funding sources, state grant or other funding sources that are not specifically targeted for rail infrastructure safety improvements should be considered. The State's Transportation Improvement Board (TIB) provides grants for various kinds of transportation projects to cities and urban counties throughout

the state with funding from revenue generated by three cents of the statewide gas tax. Matching fund requirements for this program are based upon valuation amounts for cities and counties described in agency rules at WAC Chapter 479-12 and range from 10 to 20% of total project costs. Skagit County, Mount Vernon, Burlington and Sedro Woolley have all used TIB grants for transportation projects and the City of Yakima received a grant for over $6 million in TIB funds for its two grade separation projects discussed above.

Also, might the Regional Mobility Grant Program be used to request grant monies for projects aimed at improving regional transit (Skagit Transit) service where traffic congestion at at-grade crossings due to the 28 miles of additional trains per day that would pass though the area associated with the Gateway Terminal project would likely become an impediment to service? The 2011-2013 state budget will continue to provide support for local efforts to improve transit under this program, unless further budget cuts make grants unavailable. Factors that WSDOT considers for proposed projects under this program include: "reducing delay for people and goods, supporting freight and goods movement as related to economic development and regional significance, and resolving safety and security issues."

The 2006 Statewide Rail Capacity and System Needs Study discusses policy concerning state investment in the private rail system and states that the costs of improving rail service must also take into account the cost of mitigating impacts of increased rail traffic on communities near terminals and along mainlines. The Commission report adds: "[F]inally, the cost of state participation should weigh Washington State benefits against national benefits. When a substantial share of the benefits of a project accrue to rail users outside of Washington State, the State's contribution should be limited." Will this recommended policy be applied to the Gateway Terminal project's rail transportation impacts? If so, with what result?

3. LOCAL FUNDING

Cities, counties, transit agencies, and port districts also share financial responsibilities for funding local transportation systems improvement projects. For example, the City of Burlington committed $350,000 for replacement of the Burlington Bridge project. As another example, over $3 million from local sources has been committed by the City of Yakima's for its two grade separation projects.

Cities and counties rely on sales and property taxes for a significant proportion of their operating revenue, funding debt service, and concurrently financing local transportation infrastructure. Local governments are required to provide various levels of matching funds for state grant programs. While cities and counties receive some funding from gas tax revenues, these revenue sources have declined significantly in recent years due to the economy and ballot initiatives limiting tax increases. Except for county road funds, no local sales and property tax revenues are dedicated to transportation needs. Instead, transportation projects must compete with other general purpose government needs within the budgets of cities and counties. Local government funding for such projects

has become even more difficult in the down economy and cities and counties are having to prioritize scarce resources. The WTP 2030 recommends that the Legislature give WSDOT and local governments more options to use "efficient, proven construction management and financing techniques to stretch limited resources." That would not likely occur in time to meet railway infrastructure needs associated with the Gateway Terminal project.

B. PRIVATE FUNDING

It is not unusual for private sector entities or individuals that benefit from a transportation project in Washington State to pay some portion of the costs. For example, private commercial or residential development projects that benefit from a new roadway or extension of a roadway that would serve the development may help pay some of the costs of constructing the roadway. The private sector entities involved in development of the Gateway Terminal project and rail transportation of coal to the Terminal are BNSF Railroad, SSA Marine, Goldman Sacks, and Peabody Coal.

1. BNSF RAILROAD FUNDING

Is BNSF required by law to pay part or all of the funds needed for rail infrastructure improvements? May it pay project costs by agreement?

The answer depends on the nature of the project and the funds used. Rail infrastructure projects such as creating new grade separations so that traffic and rail conflicts can be avoided or improving the state's high speed rail service, are carried out via negotiated agreements that at a minimum include the state and the railroad as a parties. Where a crossing is not on a state highway, a local government having maintenance and enforcement jurisdiction over a road is also a party. These agreements include project location, scope of work, standards to be applied, amounts and basis of payments, billing procedures, and maintenance responsibilities. Items required to be in written agreement for federal-aid funding are set out in the Federal Highway Administration's Federal-aid Policy Guide Non-Regulatory Supplement NS 23 CFR Part 646 B and in 23 CFR §646.216(d).

When federal SAFETEA-LU funds are sought for projects to eliminate hazards at railway-highway crossings federal law allows the U.S. Secretary of Transportation to classify the various types of projects to eliminate railway-highway crossings and to set for each such classification a percentage of the costs of construction deemed to represent the net benefit to the railroad to determine the railroad's share of the cost of construction. "The percentage so determined shall in no case exceed 10 per centum." 23 U.S.C. §130(b). (But see discussion of rules modifying this percentage in the next paragraph.) The railroad's liability to the United States can be discharged by direct payment to the transportation department of the state in which the project is located and the payment will be credited to the cost of the project. The law also states: "Such payment may consist in whole or in part of materials and labor furnished by the railroad in connection with the construction of such project."

Federal regulations implementing 23 U.S.C. 130(b) are found at 23 CFR part 646. (Additional rules for projects to eliminate railroad-highway crossing hazards are found in 23 CFR part 924.) The rules in 23 CFR §646.210 classify projects deemed to provide a "net benefit to the railroad" and describe the railroad's cost responsibilities. These regulations say first that state laws requiring railroads to share in the cost of work for the elimination of hazards at railroad-highway crossings are not applicable on federal-aid projects. They further provide that projects for grade crossing improvements area are deemed to be of no "ascertainable net benefit" to the railroads and there shall be no required railroad share of the costs. However, §624.210(b)(3) provides that on federal-aid projects for the elimination of existing grade crossings at which active warning devices are in place, the railroad's share of the project costs shall be 5 percent based on the costs for preliminary engineering, right-of-way, and construction. The railroad share of the costs are based upon "costs for preliminary engineering, right-of-way and construction" within the limits described as follows:

> (1) Where a grade crossing is eliminated by grade separation, the structure and approaches required to transition to a theoretical highway profile which would have been constructed if there were no railroad present, for the number of lanes on the existing highway and in accordance with the current design standards of the State highway agency.
>
> (2) Where another facility, such as a highway or waterway, requiring a bridge structure is located within the limits of a grade separation project, the estimated cost of a theoretical structure and approaches as described in § 646.210(c) (1) to eliminate the railroad-highway grade crossing without considering the presence of the waterway or other highway.
>
> (3) Where a grade crossing is eliminated by railroad or highway relocation, the actual cost of the relocation project, the estimated cost of the relocation project, or the estimated cost of a structure and approaches as described in § 646.210(c)(1), whichever is less.

On projects to eliminate existing grade crossings at which there are not active warning devices in place and such warning devices have not been ordered installed by a state agency, or on projects that do not eliminate an existing crossing, there is no required railroad share of the project cost. Finally, the rules provide that the railroad may voluntarily contribute a greater share of the project costs than the rules require and that "other parties" may voluntarily assume the railroad's share.

With regard to improvements to increase passenger rail service like longer sidings and additional mainline tracks, the WSDOT 2010-2013 Freight Rail Plan states: "BNSF has stated that the funding of these longer sidings and additional mainline tracks should not be the exclusive responsibility of the private railroads, when the need is driven by passenger rail service or the need to preserve freight rail service due to increasing passenger rail service." When such high speed rail projects are funded under the

ARRA/HSIPR program, BNSF receives some of these federal funds for work its employees perform. (This is because these projects will benefit Amtrak Cascades trains that will run on BNSF's tracks.) In general, the nature of BNSF's responsibilities under agreements for these projects is to allow use of their rail lines and to help Amtrak Cascades meet a reasonable level of on-time performance for passenger service. In some cases, for example the Hickox Rd. siding project, BNSF acts as construction manager or provides other work.

The BNSF Railway-Union Pacific Railroad Guidelines for Railroad Grade Separation Projects say that any party proposing a grade separation project on railroad right-of-way or other railroad operating location shall, at its own expense be solely responsible for all costs, design, construction, future replacement, maintenance and serviceability of a proposed grade separation project except as otherwise noted an any construction and maintenance agreement that has been negotiated between the railroad and the party proposing the project.

The Guidelines further state that the party applying for the grade separation project has to develop the design plans and procedures necessary to construct and maintain the project to include procedures ensuring that there will be no interruption to railroad operations during and after construction. Also, the project applicant "shall be responsible for obtaining all Federal, State, local and other permits" for construction. The project applicant is also responsible for the security and safety of "all people" and all railroad infrastructure within the limits of the project. The construction and maintenance agreement between the project applicant and the railroad must include, among other things, funding source, cost estimate, insurance and indemnification requirements, method of payment, responsibility for design, construction, ownership, maintenance and future replacement. The railroad assumes the expense of ownership and maintenance of "track components only." The Guidelines contain many more requirements for grade separation project applicants.

Provisions of Washington State law, administered by the UTC, also might be applied to certain types of grade separation projects.

RCW §81.53.110, "Cost when highway crosses railroad" provides:

> Whenever... an exiting grade crossing is eliminated or changed (or the style or nature of construction of an existing crossing is changed), the entire expense of constructing a new grade crossing, an over crossing, under-crossing, or safer grade crossing, or changing the nature and style of construction of an existing crossing, including the expense of constructing approaches to such crossing and the expense of securing rights-of-way for such approaches, as the case may be, shall be apportioned by the commission between the railroad, municipality or county affected, or if the highway is a state road or parkway, between the railroad and the state, in such manner as justice may require, regard being had for all facts relating to the establishment, reason for, and construction of said improvement. If the highway involved is a state road or parkway, the amount not apportioned to

the railroad company shall be paid as provided by law for constructing such state road or parkway.

RCW §81.53.130 specifies how costs are to be apportioned among the parties and has provisions for settling amounts due and disputes that may arise. As discussed above, as a matter of federal Department of Transportation Rules implementing 23 U.S.C. 130(b), this state statute cannot be applied to federal-aid projects. According to UTC staff, this law has not often been used historically and there is little precedent to guide its application.

BNSF does fund rail line improvements to expand its own freight rail capacity including laying new track, buying new equipment, and improving infrastructure such as rail sidings. The 2006 Statewide Rail Capacity and System Need Study notes that while Class I railroads like BNSF are investing in the state's rail system to increase capacity and improve service, "their business practices and investment priorities are driven primarily by the railroads' national-level needs and competition." Much of the money BNSF spends has been for maintenance of existing facilities. Federal funds are not eligible for costs incurred by BNSF for projects solely for its own benefit. Thus far, BNSF has not stepped up to the plate for funding replacement of its Burlington bridge. A 2007 United States Government Accountability Office report, Railroad Bridges and Tunnels: Federal Role in Providing Safety Oversight and Freight Infrastructure Investment Could Be Better Targeted, observed based on reports from several Class I railroad representatives: "railroad bridge replacement typically has a lower rate of return on investment, making it more likely that railroads would invest in other enhancements before rehabilitation or replacement of railroad bridges."

BNSF could also voluntarily pay part of the costs needed by local governments to accommodate the Gateway Terminal trains, even where not required to do so to meet its own needs or by law. BNSF may also supply private matching funds for types of public funding programs to be used, for example to obtain SAFETEA-LU or FMSIB funding.

2. GATEWAY TERMINAL PROJECT APPLICANT SSA MARINE

Is SSA Marine required to pay for needed railway infrastructure improvements?

It will be up to the decision makers who may issue the permits for the Gateway Terminal to determine not only whether infrastructure needs along the rail corridor will be addressed in the EIS process, but, if so, whether necessary transportation improvements will be required as part of mitigation of project's impacts. It is important to consider, of course, that cities and counties all along the rail line may be seeking mitigation of their transportation infrastructure costs through the EIS and permitting process in order to alleviate the impacts of the coal trains. (These local governments are likely to be competing for mitigation dollars, private or public.) As just one example, the City of Marysville has 14 at-grade crossings that are anticipated to be impacted by the Gateway Terminal project. Even if SSA Marine is required to pay for new rail/traffic infrastructure projects as part of mitigation, the amount would likely be woefully inadequate to address

all of the new infrastructure needs in the rail corridor.

Of course, SSA Marine can voluntarily pay these costs as a party to a rail infrastructure improvement agreements despite any mitigation that may or may not be required as part of the permitting process. Additionally, some public funding programs may require SSA Marine's participation, for example, FMSIB's funding program.

In its Sept. 13th letter to the Skagit Council of Governments, the Port of Skagit notes that the Gateway Terminal project will "have a negative impact on economic development in our community leading to a net loss of jobs" that could be at least partially solved by the construction of railway crossing overpasses. The Commissioners said: "[T]he notion of 'he who benefits pays' is considered fundamentally fair in America and we believe it is fully applicable to the Gateway project's effect on our community."

The state's Freight Rail Plan sounds a similar note: "[F]unding the necessary investments in the freight rail system should be shared among those that receive benefits from the system in proportion to those benefits received." That would logically include SSA Marine and Peabody Coal. SSA Marine is the largest stevedoring company in the world and is 49% owned by Goldman Sacks. The coal shipper, Peabody Coal, is the largest coal company in the world. It would not seem to be beyond their ability to pay for rail infrastructure improvements necessitated by their project. So far, neither applicant SSA Marine nor Peabody Coal has volunteered to pay any of these costs.

VII. WHAT ABOUT THE TIME GAP BETWEEN NEEDED INFRASTRUCTURE AND THE COAL TRAINS ROLLING?

What happens if there are no public or private funds available when it is time for grade separation projects to get funded and constructed in Skagit County to accommodate the coal trains? Will the coal trains nevertheless travel through the area even if needed crossing changes are not complete?

Unknown. The "gap" in planned opening of the Gateway Terminal and infrastructure improvements needed to keep transportation routes open in Skagit County is a very significant issue. The Gateway Terminal as proposed is presently scheduled to open for business in 2015 and will handle up to 54 million tons of coal annually. Necessary railway crossing and bridge infrastructure for Skagit County would not be complete by that time. Indeed, it seems doubtful whether funding for the needed infrastructure could be accomplished by that point, much less pre-construction and construction work.

Typically, such projects for grade separations are carried out in phases. It can take many years for each of the kinds of projects that would be needed in Skagit County. For example, the two grade separation projects by the City of Yakima began with preliminary studies in 1998 and 1999. Those projects are still ongoing. During the "gap" period, local traffic will likely shift to travel routes without a long coal train crossing every 1.3 hours (in addition to the existing trains that currently cross at grade). How will local governments control heavier traffic and ensure emergency vehicles along these routes?

How will traffic tie-ups from I-5 exits to nearby roadways with at-grade crossings be alleviated? What will be the effect on the local economy, including on events such as the Tulip Festival, of these I-5 traffic delays?

VIII. HOW WOULD THE INFRASTRUCTURE PROJECTS AFFECT CITIES?

If public and/or public-private funding could be obtained for Mount Vernon and Burlington's grade separation and BNSF Burlington bridge reconstruction needs, what impact would those projects have on those cities? How would infrastructure changes play out as a practical matter?

It is important to understand the nature of the potential grade separation projects needed to alleviate traffic and emergency response delays in Mount Vernon and Burlington. As an initial matter, WSDOT and city staff will need to evaluate what is needed and discuss potential designs and projects to alleviate the problems that will result from the drastically increased rail traffic through the city. Given the locations and potential engineering challenges of particularly the existing downtown at-grade crossings, would grade separation projects leave Mount Vernon with a long elevated highway (or rail line?) over downtown and across the city? If that is the case, this kind of project or even separate under-pass and over-pass projects would drastically alter the entire configuration and appearance of the city. Similar effects would result in Burlington. Will there be a need to move and/or otherwise reconfigure streets and permanently alter traffic flow patterns?

How would traffic flow during construction of grade separation projects be managed? (See discussion in paragraph above.) How will timing of all the needed construction projects be coordinated? During construction of the Burlington BNSF railroad replacement bridge, train operations will need to be suspended periodically and for some length of time as there is no alternate route for trains in the vicinity. What would be the impact on freight and passenger rail operations if the Burlington bridge project is proceeding simultaneously with grade separation projects?

What public opposition to grade separation projects might arise? How would these potentially drastic transportation infrastructure changes impact new economic development plans, downtown redevelopment in Mount Vernon, property values, new commercial and residential development projects, and the cities' strategies for compliance with the Growth Management Act?

The public should be included in the plans for these infrastructure changes early in the process. Affected cities and their citizens need to be very sure about what transportation changes are being planned before supporting the notion of such projects, even if funding from public or private sources is found or promised. Of course, all transportation (and resulting economic) impacts to Skagit County need to be thoroughly studied in the EIS process for the Gateway Terminal.

IX. WERE THE LOCAL INFRASTRUCTURE NEEDS ANTICIPATED?

A. ***Were the Gateway Terminal and associated trains considered in our regional transportation plan?***

No. Our RTPO RTPO (Regional Transportation Planning Organization), part of the Skagit Council of Governments) has produced the Skagit Metropolitan and Skagit-Island Counties Regional Transportation Plan for 2010-2035. Nowhere in this report are there any railroad grade crossing projects listed for Mount Vernon or Burlington that would be required by the addition of the Cherry Point Gateway terminal trains or the combined coal, Tethys, and Tesoro trains. As discussed above, the Burlington BNSF bridge project is identified in the report.

B. Were the Gateway Terminal project and associated trains anticipated by state transportation reports?

No, the WSDOT 2010-2030 Freight Rail Plan issued December 2009, a plan required by the Federal Railroad Administration in order to receive federal assistance, does not mention this project in the discussion about freight rail or ports. The report discusses the I-5 rail corridor and says that BNSF has no public plans to increase capacity over the I-5 route other than those announced to support intercity passenger train volumes. This report notes that the fluidity of the I-5 rail corridor is key to the economy of the state. The report says it will be important to monitor capacity versus demand for this corridor and prepare for capacity improvements in order to keep the rail network flowing: "[T]his will require coordination between all stakeholders and partners to ensure that capacity is available for this corridor and its communities to meet their respective needs." The report notes that public funding could include monies for longer sidings or additional mainline tracks and safety improvements such as grade separations.

At the time the Freight Rail Plan was issued, planners noted that the economic recession had impacted freight transportation and, based upon information made available to them by stakeholders including the railroads, stated that for planning period the "long-term growth rate [for freight transportation] is likely to be mild, in the range of 2 percent." The number of Gateway Terminal coal trains upends this projection.

The Freight Rail Plan shows that the 2008 I-5 corridor rail line capacity for Skagit County is 18 trains per day. Without rail line improvements, the trains associated with the Gateway Terminal project alone would fill that capacity daily in Skagit County. At present it appears that 15 trains a day pass through Mount Vernon, counting passenger trains, thus this area of the I-5 corridor may currently be at approximately 83% capacity unless projects like the Hickox Rd. siding have already affected this figure or will in the future when the siding is extended. Although the Plan projects increases in rail line capacity by 2028, Skagit County is projected to be at 70 to 100% of capacity even by that year. Gateway's 18 daily trains would could cause the rail traffic through the county to far exceed 100% capacity even in 2028, unless there is a reduction in other rail users or significant operational and infrastructure changes can be made.

Likewise the 2009 Marine Cargo Forecast prepared for Washington Public Ports Association and WSDOT does not contain information about or analysis of the Gateway terminal project and/or its impacts on rail traffic in the I-5 corridor. The Forecast states that BNSF's Resource Planners reported that passenger rail growth would continue to drive investments in capacity expansion for the foreseeable future, especially in the I-5 corridor. It further says that BNSF's capacity investment for the state "over the next five years does not include any significant expenditures, other than participation in siding extensions at Mount Vernon and Stanwood" and construction of new customs inspection siding at the Blaine. If BNSF knew the Gateway Terminal project plans when the state and regional reports were prepared, it certainly should have made state planners and local governments aware of them.

X. CONCLUSION

The transportation impacts upon Skagit County that can result from the Gateway Pacific Terminal project and associated 28+ miles of additional daily coal trains seem overwhelming. If the Gateway Terminal project is approved, infrastructure projects that will be needed to alleviate traffic congestion in Skagit County in order to maintain the local economy will cost many millions of dollars. A study of possible financing for mitigation measures to heal the significant disruption of efficient transportation in Skagit County reveals that funding to alleviate the traffic congestion and railroad crossing safety issues will be largely, if not entirely, accomplished with taxpayer money. Typically, such projects involve combinations of federal, state, and local funds. Private railroads like BNSF often provide work (rather than cash funds) for such projects to ensure that their rail lines and right-of-way interests are protected.

It may take many years - well beyond the anticipated date that the terminal will be completed and operating - for needed transportation projects to be funded, planned, and constructed. Skagit County transportation planners must also keep in mind that trains transporting coal from Wyoming/Montana to the Gateway Terminal will travel through cities and counties the entire width and length of the state, all of which will be competing for federal and state tax dollars to mitigate the impacts on their communities. Meanwhile, increased wait times at Skagit County's at-grade crossings will have "a negative impact on economic development in our community leading to a net loss of jobs", according to the Port of Skagit Commissioners.

The number, size, and weight of the coal trains that will travel through the County daily will alter the Skagit Valley's economy, planning and budgeting efforts, and the lives of its citizens, forever. It is arguably the largest issue (threat) presently facing Skagit County. Will the Skagit Valley be forced to give up an economy built around tourism, agriculture, locally owned businesses, manufacture of local goods, and a reputation for great quality of life, so that coal can be cheaply exported from Wyoming/Montana to Asia? Will we become a "quality of life sacrifice zone", bearing the massive socialized costs of this project and sharing in few if any of the benefits?

As part of the EIS process, SSA Marine should be required to address in detail the transportation impacts on Skagit County and to present cogent proposals for timely mitigation of these impacts, as well as our potential loss of business revenues, tax revenues, and local jobs which depend upon an efficient and well planned transportation system.